

February 23, 2012

via electronic filing

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

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Office of Proceedings

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Part of
Public Record

**RE: Finance Docket No. 35583, Eastern Alabama Railway LLC –
Petition for Declaratory Order**

Dear Ms. Brown:

On February 21, 2012, the R.J. Corman Railroad Group ("R.J. Corman") filed "Comments" in the above-captioned proceeding. In the Comments, R.J. Corman makes a number of general statements about rail line utility crossings, and the Utilities Board of the City of Sylacauga ("Utilities Board") agrees with some of these statements. For example, the Utilities Board agrees that the case law is clear that routine utility crossings are not preempted (Comments at 1 and 3).

R.J. Corman also makes a number of comments about "routine terms and conditions" that should apply to such crossings. (Comments at 3). It does not, however, identify exactly what it considers to be such routine terms. The Utilities Board agrees with R.J. Corman that reasonable safety measures can and should be observed. The Utilities Board always has and will continue to comply with those measures, as is confirmed by the testimony of Eastern Alabama Railway's ("EARLY") general manager, Larry Nordquist, in his deposition in the 2010 condemnation case discussed in the Utilities Board's briefing.¹

R.J. Corman also mirrors the comments of Paducah and Louisville, and the more caustic comments of EARLY, in seeming to suggest that railroads have a monopoly on safety while utilities are uniformly reckless. This refrain is unfortunate and illogical. The consequences for either a railroad or a utility that fails to comply with reasonable safety measures can be severe under existing law. Thus, while the Utilities Board does not wish to be placed in the position of defending the entire utilities industry in the United States, it notes that the various assertions of the railroad commentators is fundamentally at odds with both common sense and the extensive regulatory obligations with which utilities in this country must comply.

¹Indeed, as we have stated the Utilities Board previously agreed with EARLY on terms and conditions for its crossings, but EARLY later stated that the substantial annual fee did not cover all crossings. See, e.g., Reply Evidence at 9 (n. 6) and 11 (filed Feb. 13, 2012).

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Regardless, the Surface Transportation Board ("STB") can and should ignore the Comments. They are not directly applicable to the preemption question referred to the STB by the U.S. District Court for the Northern District of Alabama. Contrary to R.J. Corman's view, whether or not the Alabama condemnation case is preempted by federal law is not and should not be converted to an "industry-wide" question. Comments at 1.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,



Sandra L. Brown

David E. Benz

Counsel for the Utilities Board of the City of Sylacauga

cc: Louis Gitomer, Counsel for EARY (via e-mail)
Scott Williams, Counsel for RailAmerica (via U.S. first-class mail)
William A. Mullins, Counsel for Paducah & Louisville Railway (via e-mail)
Thomas J. Litwiler, Counsel for R.J. Corman (via e-mail)